Supreme Court, U.S.
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OFFICE

NO.

IN THE

SUPREME COURT OF THE UNITED STATES

KENNETH A KOZEL,

Petitioner,

v.

MARY ROBINSON, ADMINISTRATOR, ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF THE ILLINOIS SUPREME COURT,

Respondent.

On Petition for Writ of Certiorari
To The Illinois Supreme Court

PETITION FOR WRIT OF CERTIORARI

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76 pp

Introductory Statement

The Illinois Supreme Court stripped Kenneth Kozel of his right to practice law in a one-sentence order saying, "Respondent is disbarred", without issuing an opinion or providing any other explanation for the court's ruling. Kozel was not allowed to file a brief in advance of the court's ruling, which is allowed all non-attoneys by Illinois Supreme Court Rule.

A unanimous Review Board of the Attorney Registration and Disciplinary Commission of the Illinois Supreme Court (ARDC) recommended that Kozel be suspended from the practice of law for three years, overruling a recommendation of disbarment by a Hearing Board of the ARDC. Hearing Board and the Review Board recommendations are purely advisory. Kozel and the ARDC filed exceptions to the report of the Review Board with the Illinois Supreme Court, and the court allowed the exceptions of both Kozel and the ARDC.

Kozel was disbarred for the exercise of his Constitutionally protected right to freedom of expression rather than any misconduct. Kozel had filed pleadings in court on behalf of his clients to obtain a fair trial that alleged bias and prejudice against certain judges. The ARDC charged Kozel with violating a rule of professional conduct, and claimed the allegations were false or reckless statements involved the integrity of the judges. Kozel's pleadings were based on the subjective belief of his clients and of himself, in other words, subjective, not objective, opinion.

(a) Questions Presented for Review

Whether an attorney's allegations of bias and prejudice against judges on behalf of his clients are constitutionally protected by the First Amendment.

Whether an ttorney was denied due process and equal protection of the law and an opportunity to defend when the Illinois Supreme Court disbarred him with a three-word order ("Respondent is disbarred"), and neither issued an opinion nor provided him with an explanation.

Whether an attorney's disbarment in regard to allegations of bias and prejudice against judges on behalf of his clients was the result of unconstitutional selective prosecution.

Whether an attorney was denied due process and equal protection of the law when the Illinois Supreme Court disbarred him without allowing him to file a brief after the court had allowed the filing of his petition for leave to file exceptions.

Whether an attorney who was disbarred without being allowed judicial review as a matter of right in any court, was denied due process and equal protection of the law.

Whether an attorney's disbarment was predicated on alleged conduct during prehearing proceedings before a hearing board for which the attorney had never been charged and, therefore, was never given an opportunity to defend against.

Whether the Illinois Supreme Court denied an attorney due process and equal protection of the law when the court confirmed a recommendation of disbarment by hearing board members who were not judicially appointed officers.

Whether an order of disbarment entered by the Illinois Supreme Court is unenforceable because the judicial districts that comprise the Illinois Supreme Court are not in compliance with the one-man, one-vote requirement.

Whether *Illinois Supreme Court Rule of Professional Conduct 8.2(a)* is unconstitutionally void for vagueness and overbroad as interpreted in a disbarment proceeding.

Whether the punishment of disbarment for an attorney who alleged bias and prejudice against judges on behalf of his clients is unconstitutionally disproportionate and arbitrary and violated the attorney's right to due process and equal protection of the law.

(b) The caption of the case contains the names of all parties.

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(e) Basis for jurisdiction:

(i) June 30, 2000

(ii) August 11, 2000

(iii) Rule 12.5 is not applicable

(iv) Supreme Court Rule 10

(v) Rule 29.4(b) is not applicable. In regard to Rule 29.4(c), the appropriate agency, the Attorney Registration & Disciplinary Commission of the Illinois Supreme Court (ARDC), is a party.

(f) Constitutional provisions, statutes, etc.

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(g) Statement of the Case

The Review Board of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois (ARDC) found that Kenneth Kozel was licensed to practice law in Illinois in 1975. He served two years in the U.S. Army and was honorably discharged. He was married for 27 years and had three children. He

represented many people with little or no income. Appendix, p. 8. Kozel had never been disciplined or charged with any alleged misconduct by the Attorney Registration ant Disciplinary Commission of the Illinois Supreme Court (ARDC) until this proceeding was instituted in 1996.

The Review Board noted that most of the allegations made against Kozel related to allegations of bias and prejudice made in motions to substitute or disqualify judges in litigation. App. p. 3,6-7, 13. Illinois statute *735 ILCS 5/2-1001, Illinois Supreme Court Rule 63* and federal statute *28 USCS 455* allow such motions to be made by an attorney. App. p. 259-261, 261-267, 267-270). The ARDC had characterized the allegations of bias and prejudice as knowingly false statements concerning the integrity of the various judges in violation of Illinois *Supreme Court Rule of Professional Conduct 8.2(a)*. App. p. 208-244.

The Review Board got the case after a hearing board of the ARDC, consisting of two attorneys and a non-attorney appointed by the ARDC, recommended disbarment. Kozel was never questioned before the hearing board in regard to any of the allegations of bias. There was no proof elicited at the hearing that an allegation was false or that Kozel knew that an allegation may have been false. See App. p. 29-128.

There was a variance in the Hearing Board report between what was charged in each count of the complaint and the specific factual finding made in regard to each count. For example, Count 1 charged that Kozel had alleged that a judge disregarded procedural deficiencies and the rights of Kozel's client because the judge was afraid of the power of the

ARDC. The specific factual finding for Count 1 did not address this allegation and found Kozel guilty of misconduct that had never been charged. App. p. 29-128, 208-244.

The Review Board consisted of three attorneys and recommended a three-year suspension. The Review Board reversed the Hearing Board's findings in regard to Counts 9 and 10 and found error in the Hearing Board's failure to allow Kozel to present character testimony. The Review Board found that some of the allegations of judicial bias were justified and that Kozel had done pro bono work. App. p. 3-28. 153.

The Illinois Supreme Court denied Kozel's motion for an additional 35 days in which to file his petition for leave to file exceptions with the Illinois Supreme Court, and denied all subsequent motions to supplement the petition. App. Orders 1-25-00, 3-15-00, 3-28-00, 4-18-00, p. 1, 2; App. motions p. 188-190, 193-207. The Illinois Supreme Court allowed the ARDC additional time to answer Kozel's petition. App. Order 2-24-00, p. 1; App. motion 191-192.

The Illinois Supreme Court then disbarred Kozel with a three-word order that stated, "Respondent is disbarred." App. p. 130. The Illinois Supreme Court denied Kozel's motion to supplement the motion for reconsideration and rehearing and the motion for rehearing and reconsideration itself. App. Orders, 8-08-00 & 8-11-00, p. 129; App. motions 157-169.

The Review Board stated that this was an "unusual case. App. p. 6. The Review Board reviewed some of Kozel's allegations of judicial bias: a judge disregarded procedural deficiencies and the rights of

Kozel's client because the judge was afraid of the power of the ARDC (Count 1); a judge treated Kozel and his client differently from other attorneys and debtors and went along with alleged harassment of Kozel's client by a creditor (Count 3); a judge was racially biased and may have had a business relationship with an opposing side (Counts 4, 6 & 10); a judge had a referral relationship with opposing counsel when the judge was an attorney (Count 5); a judge was prejudiced because another judge had spoken to that judge about Kozel's client (Count 8). App. p. 13, 14.

The remaining allegations of judicial bias consisted of: a long-standing fee arrangement between opposing counsel and a judge's father that the judge admitted was true (Count 5) App. p. 14, 19-20; a judge who admitted he would not speak to Kozel (Count 7) App. p. 19-20; a disciplinary complaint filed with the ARDC by a client's mother-in-law against a judge when the judge was an attorney (Count 7) App. p. 83; a judge who admitted that his wife had fired Kozel's client from a radio station (Count 8) App. p. 96; a judge who overlooked legal irregularities by the clerk of the judge's court because of political affiliation (Counts 9 & 11). App. p. 100, 102. A reference to a judge as "an old prosecutor" that was never made as an allegation of bias, but rather as an acknowledgment of reality (Count 2). App. p. 43.

The Review Board acknowledged that Kozel did not publicize any allegations of judicial bias outside of the courtroom or try to intimidate or influence any judge. App. p. 25. The Review Board also acknowledged instances in which a judge disqualified himself after Kozel filed a motion, and that a judge had

admitted that he never spoke to Kozel unless a court reporter was present. App. p. 14, 19-20.

Count 4 charged Kozel with making a frivolous objection, objecting to opposing counsel's use of a facsimile signature rather than an original signature on an appellate brief. App. p. 10. The Review Board hinted that Kozel had a legitimate basis for this objection but ignored the case of *Bachman v. Kent*, 293 Ill. App. 3d 1078 (1st Dist. 1997), that held that an original signature is required on all court documents. App. p. 15.

Two other counts did not involve allegations of judicial bias. Count 12 involved an appearance before a court without being admitted eight years earlier in 1988. Kozel claimed he was admitted and that the record of admission had been misplaced. An Inquiry Panel of the ARDC had closed the matter without authorizing charges eight years earlier in 1990. The Review Board found ambiguities in the record in regard to this count. App. p. 22.

Count 13 involved a client's worker's compensation case that originally had been filed by another attorney. The case was dismissed for want of prosecution, but the case was reinstated and the client did receive an agreed settlement. The Review Board noted an issue in whether Kozel was aware of the date of the hearing. App. p. 13.

(i) Federal Questions

The Illinois Supreme Court alone exercises disciplinary power over lawyers. Disciplinary proceedings are original proceedings in the Illinois Supreme Court. *In Re Harris*, 93 Ill. 2d 285 (1982).

The members of the Hearing Board and the Review Board of the Attorney Registration and Disciplinary Commission of the Illinois Supreme Court are not judicial officers. The Hearing Board and the Review Board are fact-finding bodies only, their recommendations are purely advisory and their functions do not constitute a delegation of judicial power. *In re Roth*, 398 Ill. 131 (1947).

Federal questions were raised in the Illinois Supreme Court in the following documents: petition for leave to file exceptions, App. p. 170-172; answer to Administrator's petition for leave to file exceptions, App. 172-173; motion for reconsideration and rehearing, App. 157-164; motion for leave to file amendment to motion for reconsideration and rehearing, App. 165-169.

The Illinois Supreme Court did not pass on the federal questions and entered an order without an opinion on 6-30-00, that stated, "Respondent is disbarred," App. 130; an order on 8-08-00 denying leave to file an amendment to a motion for reconsideration and rehearing, App. 129; and an order on 8-11-00 denying the motion for reconsideration and rehearing, App. 129.

(g) Argument

1. Kenneth Kozel's allegations of bias against judges are constitutionally protected by the First Amendment. The allegations are statements of opinion that can neither be proved true or false and do not imply dishonesty. The Illinois Supreme Court's order of disbarment conflicts with the decision of a U.S. Court of Appeals and with the decisions of the U.S. Supreme

Court. A U.S. Court of Appeals has issued a decision in conflict with another U.S. Court of Appeals.

The Review Board correctly held that statements of opinion by attorneys are constitutionally protected, citing *Owen v. Carr*, 113 Ill. 2d 273 (1986). App. 21. The Review Board correctly held that "attorneys can legitimately criticize a judge and disagree with his or her rulings." App. p. 21.

The Review Board noted that the Hearing Board relied on a matter involving Attorney Jafree when it recommended that Kenneth Kozel be disbarred. App. p. 25. Jafree sued on behalf of all trees in the United States. He sued various law schools seeking to have law degrees awarded to him nunc pro tunc. Kozel never made similar statements, and was never charged with making similar statements in any count of the Second Amended Complaint. App. p. 208-244.

The Review Board distinguished Jafree from Kozel. Jafree made a career of abusing the judiciary. In contrast, Kozel appeared before the same judges in other cases without incident or problem. The Review Board found that some of Kozel's allegations of bias against judges had a colorable basis. The Review Board acknowledged instances in which judges were biased against Kozel or his client. The Review Board found that Kozel did not publish anything about a judge in the press and did not attempt to intimidate and influence any judge. App. p. 25-27.

The Review Board noted that the Hearing Board relied on one other matter when it recommended that Kozel be disbarred. This matter involved Attorney Palmisano. App. p. 25.

After a judge criticized his style of dress, Palmisano submitted a brief to the judge that included a hypothetical in which an attorney shot a judge dead after the judge had criticized the attorney's style of dress. Palmisano appeared outside the Daley Center Courthouse in Chicago and passed out handbills stating that Judge Frank Siracusa was a crook. Palmisano referred to Siracusa as "Frank the crook" and "Frank the fixer." He referred to Judge Lewis as "another crook," and to Judge Pecarrelli as "a crooked judge." He made references to: "the judge's syndicate," "a crooked judge who fills the pockets of his buddies," "a judge who is stealing," and "a judge who was corrupting the system and was crooked." He referred to Appellate Justices Unverzagt, Inglis and Dunn as dishonest. Palmisano accused other judges of being crooks, fixers and dishonest. See *In Re Palmisano*, 70 F.3d 483 (7th Cir. 1995).

The Review Board distinguished Palmisano from Kozel because Palmisano had accused judges of criminal wrongdoing. App. p. 25. Kozel never accused any judge of criminal wrongdoing, and was never accused of making any such statements in any count of the Second Amended Complaint. App. p. 208-244.

The U.S. Court of Appeals for the Seventh Circuit found no First Amendment protection for Palmisano's statements about judges. *In Re Palmisano*, 70 F.3d 483 (7th Cir. 1995). A case that conflicts with the Palmisano case is *Standing Committee on Discipline v. Yagman*, 55 F.3d 1430 (9th Cir. 1995). Yagman had referred to a U.S. District Court Judge as having a penchant for sanctioning Jewish lawyers, and as being dishonest, drunk on the bench, ignorant, ill-tempered, a bully, a buffoon, a sub-standard human, a right-wing

fanatic, the worst judge in the Central District and probably one of the worst judges in the United States.

The Standing Committee on Discipline for the U.S. District Court for the Central District of California found that Yagman had violated District Court Rule 2.5.2 and impugned the integrity of the judge and interfered with the administration of justice. The Standing Committee suspended Yagman from the practice of law for two years.

The Ninth Circuit Court of Appeals reversed the suspension order, and held that that attorneys who make statements about judges are entitled to First Amendment protection. A statement of opinion concerning a judge is protected by the First Amendment, even though Yagman had accused the judge of being dishonest. Yagman's description of the judge as "dishonest, was construed as "intellectually dishonest" by the Ninth Circuit.

The Ninth Circuit in Yagman stated that prejudice to the administration of justice must be highly likely before speech will be punished. The court held that the mere possibility or probability of harm to the administration of justice does not amount to a clear and present danger, and is not enough. The danger must immediately peril the administration of justice. The substantive evil must be extremely serious and the degree of imminence must be extremely high before utterances can be punished under the First Amendment. No such prejudice, danger or substantive evil was ever specifically identified by the Hearing Board, Review Board or the Illinois Supreme Court in Kozel's case. App. p. 3-28, 29-128, 130.

The First Amendment provides that freedom of speech shall not be abridged. App. p. 132. The right to free speech cannot be abridged or censored unless the utterance or expression is of such a nature as to create a clear and present danger of bringing about the substantive evils the government has a right to prevent. *Schenck v. U.S.*, 249 U.S. 47, 52 (1919). Such a danger must rise above public inconvenience, annoyance or unrest. *Terminello v. Chicago*, 337 U.S. 1 (1949).

The Ninth Circuit's opinion in *Yagman* conflicts with the opinion of the Seventh Circuit in the *Palmisano* case. The Ninth Circuit held that Yagman's statements about the judge were protected by the First Amendment, even the accusation of dishonesty.

The Review Board declined to follow the holding in the *Yagman* case and apply it to Kozel's case. App. p. 21. The disciplinary rule used to prosecute Yagman, District Court Rule 2.5.2, is similar to *Illinois Supreme Court Rule of Professional Conduct 8.2(a)*, which was used to prosecute Kozel. App. p. 152 *Yagman*, 55 F.3d 1430. In any event, the allegations of bias against judges that Kozel is alleged to have made, did not involve theft, corruption or dishonesty, as in the Palmisano and Yagman cases. Kozel's statements are protected by the First Amendment.

2. When the Illinois Supreme Court disbarred Kozel with a three-word order ("Respondent is disbarred") and neither issued an opinion nor provided him with an explanation, he was denied due process and equal protection of the law. Practically speaking, Kozel's license was taken without an opportunity to defend.

The Illinois Supreme Court's order of disbarment conflicts with the decisions of a U.S. Court of Appeals and with the decision of the U.S. Supreme Court on an important federal question.

A. Before the Illinois Supreme Court can disbar an attorney, reasons for the disbarment must be provided.

In the Federal Courts, *Federal Rule of Civil Procedure 52* and *Bankruptcy Rule 7052* mandate that it is a court's duty to make findings of fact and conclusions of law. App. p. 135-136. The purpose is to provide a court of review and the litigants with a clear understanding of the underlying judgment, and to avoid prejudice to the litigants. A court of review is entitled to a clear basis for the decision of the underlying court. *Brown v. Quinlan*, Inc., 138 F2d 228 (7th Cir. 1943); *Feeley v. U.S.*, 337 F2d 924 (3d Cir. 1964); *Leighton v. One William Street Fund, Inc.*, 343 F2d 565 (2d Cir. 1965); *In Re Metropolitan Realty Corp.*, 433 F. 2d 676 (5th Cir. 1970), cert. Denied 401 US 1008.

The punishment of disbarment of an attorney means, for all practical purposes, the destruction of his professional life, reputation and livelihood. The Illinois Supreme Court should proceed with caution and moderation. The record must be free from doubt, not only as to the act charged, but also as to the motive with which it was done. *In re Heirich*, 10 Ill. 2d 357 (1956); *In Re Harris*, 93 Ill.2d 285, 1982; *In Re Donaghy*, 402 Ill. 120 2d (1948).

On June 30, 2000, the Illinois Supreme Court allowed the Petitions for Leave to file Exceptions of Kenneth Kozel and of the Administrator of the ARDC, yet at the same time disbarred Kozel without an explanation or by issuing an opinion. The order stated simply, "Respondent is disbarred." App. p. 130.

The Review Board previously recommended a suspension and overruled the Hearing Board's recommendation of disbarment. The Review Board filed a unanimous 20-page supporting opinion with reasons supporting a suspension and not disbarment. App. p. 3-28. The Illinois Supreme Court did not provide any reasons as to why the decision of the Review Board should not be accepted, or why the Kenneth Kozel should be disbarred.

B. Because the Illinois Supreme Court acted without explanation, it deprived Kozel of his right to further appeal to the United States Supreme Court.

An attorney in an attorney discipline case has the right to seek further review in the United States Supreme Court of an order entered by the Illinois Supreme Court. *Rule 10*, App. p. 131. As a result, the Illinois Supreme Court had a duty to issue a full opinion and provide reasons for the disbarment of the respondent so that the U.S. Supreme Court would have a clear understanding of its order. This is especially true in this case where the Illinois Supreme Court granted both parties leave to file exceptions and overturned the 20-page opinion of the Review Board.

The perfunctory order of disbarment entered by the Illinois Supreme Court denied the respondent due process of law under the Fourteenth Amendment of the United States Constitution because the Illinois Supreme Court failed to issue a full opinion, failed to provide any reasons for disbarment, failed to provide any reasons why the unanimous opinion of the Review Board should not be accepted and provided a three-word opinion ("Respondent is disbarred") that is unreviewable by the U.S. Supreme Court. App. p. 132.

In February of 2000, the American Bar Association took aim at thousands of opinions that were decided with one-word rulings, like "Affirmed." An ABA resolution has called upon all reviewing courts to provide "at a minimum, reasoned explanations for their decisions." App. p. 245-248.

The Illinois Supreme Court has issued a great number of opinions in disbarment cases through the years in which the court has provided reasons for the disbarment of an attorney. App. p. 174-182. The Illinois Supreme Court denied Kenneth Kozel equal protection of the law under the Fourteenth Amendment of the United States Constitution by issuing an opinion in all these other disbarment cases and providing reasons for disbarment, but not issuing an opinion in Kozel's case and not providing any reasons for his disbarment. App. p. 132.

Supreme Court Rule 753(e)(5)(i) provides that the Illinois Supreme Court can enter a final order as recommended by the Review Board or "as otherwise determined by the court. App. p. 137-144.

The words, "as otherwise determined by the court." are unconstitutional as applied in Kenneth Kozel's case. The Illinois Supreme Court's three-word order ("Respondent is disbarred") denied Kozel a full opinion and reasons for disbarment, and denied him reasons why the Illinois Supreme Court overturned decision of the Review Board. The three-word order is also unreviewable by the U.S. Supreme Court. By applying *Rule 753* in this fashion, the Illinois Supreme Court denied Kenneth Kozel due process and the equal protection of the law under the Fourteenth Amendment of the U.S. Constitution. See App. p. 132.

3. Kenneth Kozel was selectively prosecuted in regard to allegations of bias against judges and was denied due process and equal protection of the law. The Illinois Supreme Court's order of disbarment conflicts with a decision of a U.S. Court of Appeals and with a decision of the U.S. Supreme Court.

There is a recognized constitutional right to be free from selective prosecution on the basis of speech and being denied the equal protection of the law. *Wayte v. U.S.* 470 U.S. 598 (1985). A two-pronged test is involved for selective discrimination. (1) It must be demonstrated that a certain person was singled out for prosecution while others similarly situated have not been prosecuted for conduct similar to that for which the certain person was prosecuted. (2) It must be demonstrated that the discriminatory selection of the certain person was based on the right to free speech. *Moss v. Freeman,* 604 F. 2d 569 8th Cir. (1979).

Kenneth Kozel was selectively prosecuted in regard to allegations of bias against judges. He was accused of violating *Illinois Supreme Court Rule of Professional Conduct 8.2(a)* and impugning the integrity of judges. App. 152.

The Review Board noted that Kozel's allegations were not publicized in the press. App. p. 25. In contrast, eye-opening statements about judges made by prominent and connected attorneys, using extremely harsh and offensive language, have been publicized in the press. The Administrator of the ARDC has not filed a single complaint against any of the Illinois attorneys who made the following statements.

Attorney David I. Grund referred to Cook County Circuit Judge Patricia Banks as "a disgrace" and as "an embarrassment", and that her ruling in a

case was "certainly influenced by the immense power" of one of the litigants and "didn't involve the facts or the law." App. p. 201-207.

Attorney Joseph R. Martan wrote a letter to the editor of the Chicago Daily Law Bulletin, that contained the following statements about Illinois judges: "Whining state judges... The Illinois Judges Association is hardly the most objective professional group"... too many state judges never had the law school record that would have gotten them hired as an associate at one of the prestige firms"... How many state judges, serving or now off the bench, were Order of the Coif or Law Review editors?... how many state judges have spent any appreciable time in private practice?"... how many state judges put in the 70 to 90-hour weeks expected of associates at the prestige firms in exchange for the exalted salaries? Not many, based on my on my private practice experience." App. p. 193-200.

Attorney Timothy P. O'Neill published a column in which he wrote that the U.S. Supreme Court's "paltry output of 75 opinions makes an appointment to the Supreme Court look like a prestigious form of early appointment." App. p. 252.

Regarding the infamous "Baby Richard case" issued by the Illinois Supreme Court and written by Justice Heiple *(In re Petition of Doe,* 159 Ill. 2d 347, 1994), Attorney Jerald Solovy accused the Justices of the Illinois Supreme Court of basing their decision on information that was "made up out of thin air." He said the justices "were mad at my clients". App. p. 249. Solovy also stated that, "I'm astounded at the swiftness of the decision and by the decision itself. It's contrary

to all Illinois precedent and to all notions of a civilized society." App. p. 249.

Regarding the same case, Attorney Patrick Murphy, Cook County Public Guardian, said, "These justices are out of control. This is a scene that I could not envision in my worst possible nightmares. This is probably the greatest proof in the world of the foolhardiness of an elected judiciary" App. p. 249.

Regarding the same case, Attorney Daniel Polsby, a law school professor at Northwestern University, referred to the Illinois Supreme Court Justices as, "Pretty actresses who can't act. I can't say that these Bozos are incompetent, but then you read the Baby Richard case." App. p. 251.

Attorney Ronald Rotunda, a law professor at the University of Illinois, on Illinois Supreme Court Justice Heiple: "Heiple's opinions just don't seem to be logical. His style is very petulant"... "One can disagree with an appellate judge without attacking him personally. If an attorney wrote in his brief the same language that the judge wrote in the (Baby Richard) opinion, a lot of judges would criticize the attorney... in the Baby Richard case he attacked Judge Rizzi, the Governor, the Legislature..." App. p. 250.

Attorney Thomas Demetrio on Justice Heiple: "I believe it to be unbecoming for a member of the judiciary to gratuitously exhibit his bias against plaintiff's personal injury lawyers in a published opinion." App. p. 250.

Attorney C. Steven Tomashefsky on Justice Heiple:

"Justice James D. Heiple's recent statement regarding his encounter with the Pekin Police Department is a

discredit to the Supreme Court... Justice Heiple's statement -- issued we understand, on official Supreme Court stationery through the court's official spokesperson -- raises serious questions about his ability to be fair in criminal cases coming before the court." App. p. 252.

Attorney Kathleen L. Roach, President of the Chicago Council of Lawyers, attacked Justice Heiple for using "old fashioned political patronage" in his appointment of Judith Koehler to the Third District Appellate Court. App. p. 253-4.

Attorney C. Stephen Tomashefsky: "When high caliber judges are elected, it's by accident". App. p. 253.

Attorney C. Stephen Tomashefsky on the election of Judge Hopkins: "I've got to assume that she did something in her community that attracted attention to her. With subcircuits, it's often something other than your legal ability." App. p. 253.

Attorney Christine Heins commented about an appellate opinion: "This is a rogue decision." App. p. 251.

While on the Third District Appellate Court, Justice Heiple dissented in the case of Prewein v. Caterpillar Tractor Co., 123 Ill. App. 3d 687, and stated: "... Modernity, however, has brought us a substitute tool for divining mysteries and future trends. It is called the Illinois Supreme Court. While opinions to its efficacy are not uniform, some say it is as reliable as bird entrails."

Certain statements about judges were made in television and radio commercials during the recent campaign for the Illinois Illinois Supreme Court. A

television commercial that aired on behalf of Appellate Justice Morton Zwick, a candidate, had this to say about Judge Thomas Fitzgerald, another candidate:

"Courts under Fitzgerald sent innocent men to death row while killers walk the streets. Illinois becomes the only state to stop executions. The Tribune calls it a chilling spectacle of criminal justice gone terribly wrong. And Fitzgerald wants a promotion to the Supreme Court. We deserve better." App. p. 193-195.

The commercial contained a picture of Judge Fitzgerald accompanied by the phrase, "Presiding Judge of a broken system." App. p. 193-194

In a commercial that recently aired on WGN Radio on behalf of Appellate Justice Bob Thomas, it was stated that "Judge Bonnie Wheaton is not telling the truth." App. p. 193-195.

In a commercial that recently aired on WGN Radio on behalf of Judge Bonnie Wheaton, it was stated that "Judge Bob Thomas is running a smear campaign." App. p. 193-195.

Even Justices of the Illinois Supreme Court themselves have made statements about each other and other justices that far exceed Kozel's allegations of bias in regard to judges.

In the order denying rehearing in the Baby Richard case (In re Petition of Doe, 159 Ill. 2d 347, 1994), Illinois Supreme Justice Heiple stated,

"Justice Rizzi grossly distorted the law... Any judge, lawyer, or guardian ad litem who has even the most cursory familiarity with adoption laws knows that (a child is not available for adoption until the rights of his natural parents have been properly terminated)...

Justice Rizzi, if he is to be taken at face value, does not know that."

Illinois Supreme Court Justice Miller, with Justices Freeman and McMorrow specially concurring, in the case of People v. Bull, 185 Ill. 2d 179 (1998), stated:

" ... Contrary to (Illinois Supreme Court Justice Harrison's) admonition in Zimmerman, however, Justice Harrison frequently chooses, as he does in this case, to impugn the integrity of other members of the court and to impute improper motives to those with whom he disagrees. Thus, at various times, he has characterized majorities of this court as enemies of labor unions (181 Ill. 2d 191, 211-12) (173 Ill. 2d 299, 342), as foes of children (173 Ill. 2d at 337), (171 Ill. 2d 378, 393-94) (169 Ill. 2d 110, 128) as biased against plaintiffs in civil actions (76 Ill. 2d 171, 178), and even as vigilantes (175 Ill. 2d 1, 60)... Baseless and unfounded imputations of improper motives to those members of the court who support a majority opinion are unjustified and demean the court... We cannot prescribe civility to members of the bar when our own opinions are disfigured by comments as offensive as those we have admonished lawyers for making. See, e.g., Kidd, 175 Ill. 2d at 53-54. We should receive no less from our colleagues than we expect from lawyers who appear in our courts."

The Administrator of the ARDC has not filed a single complaint against any of the above attorneys, judges or justices for making publicized statements about judges that greatly exceeded any allegation of

bias Kozel made in regard to a judge. The two-pronged test has been met in regard to the selective prosecution of Kozel.

4. Kenneth Kozel was denied due process and the equal protection of the law when the Illinois Supreme Court disbarred him without allowing him to file a brief after the Illinois Supreme Court had allowed the filing of his petition for leave to file exceptions.

In any case on review to the Illinois Supreme Court, other than an attorney discipline case, when a petition for leave to appeal is allowed by the Illinois Supreme Court, the petitioner, as a matter of right pursuant to Supreme Court Rule 315(g), is given the option (1) of allowing his petition for leave to appeal to stand as his appellant's brief or (2) of filing a brief in lieu of his petition for leave to appeal or as a supplement, before the Illinois Supreme Court decides the merits of the case and issues an opinion. App. p. 145-151.

A petition for leave to file exceptions in an attorney discipline case is the equivalent of a petition for leave to appeal filed by non-attorneys seeking review by the Illinois Supreme Court. However, when a petition for leave to file exceptions in an attorney discipline case is allowed by the Illinois Supreme Court, as it was in Kenneth Kozel's case, *Supreme Court Rule 753(e)(5)(a)(iii)* provides that the attorney's petition for leave to file exceptions "shall stand as the brief of the appellant." App. p.142-143.

Supreme Court Rule 753(e)(5)(a)(i) and (a)(iii), as applied by the Illinois Supreme Court in this case, denied Kenneth Kozel the second option allowed all others (non-attorneys) as a matter of right, of filing a

brief in lieu of his petition for leave to file exceptions or as a supplement, before the Illinois Supreme Court decided the case and entered its disbarment order of June 30, 2000.

Denying Kenneth Kozel the right allowed all other non-attorneys to file a brief as a matter of right after his petition for leave to file exceptions had been allowed by the Illinois Supreme Court, constituted a denial of due process and the equal protection of the law under the Fourteenth Amendment of the U.S. Constitution. App. p. 132.

5. Kenneth Kozel was disbarred without being allowed judicial review as a matter of right in any court, and was thereby denied due process and equal protection of the law. The Illinois Supreme Court's order of disbarment conflicts with the decision of the U.S. Supreme Court on an important federal question.

An attorney is the only profession in Illinois that is denied judicial review in the state Circuit and Appellate Courts as a matter of right from an administrative proceeding to terminate a professional license. All other professions in Illinois are allowed judicial review as a matter of right in the state Circuit and Appellate Courts from an administrative proceeding to terminate a professional license. App. p. 183-184.

When the *Illinois Supreme Court Rule of Professional Conduct 753* became effective on February 1, 1973, the rule provided for an administrative hearing board composed of attorneys, an administrative review board composed of attorneys, and for judicial review as a matter of right to the Illinois Supreme Court from the decision of the review board.

This all changed effective November 1, 1990. The Illinois Supreme Court revised *Rule 753*. An attorney is now denied judicial review as a matter of right in the Illinois Supreme Court in a disbarment proceeding from the decisions of the hearing and review boards.

Rule 753 not only denied Kozel review as a matter of right in the Illinois Supreme Court from the administrative hearing and review board decisions, it also denied review as a matter of right in the state Circuit and Appellate Courts from the hearing and review board decisions.

If Kozel had been allowed judicial review as a matter of right in the Illinois Supreme Court, he would have been allowed to file a brief and would have been afforded oral argument. *Rule 753* denied him those rights. As a result Kozel was disbarred without any judicial review as a matter of right.

The Illinois Supreme Court entered its order, "Respondent is disbarred" without any explanation. There is no way of telling what Kenneth Kozel was disbarred for. The Illinois Supreme Court could very well have disbarred Kozel for uncharged misconduct. The Review Board noted that an attorney cannot be disbarred for uncharged misconduct. *In Re Ruffalo*, 390 U.S. 544 (1968). App. p. 24.

Attorneys now stand alone as the only profession in Illinois denied judicial review as a matter of right in a proceeding to terminate a professional license. Even boxers, wrestlers and nail technicians are allowed judicial review as a matter of right in the state Circuit and Appellate Courts from an administrative

proceeding. App. p. 183-4. Attorneys are denied this right.

Illinois Supreme Court Rule of Professional Conduct 753 denied Kenneth Kozel due process and equal protection of the law under the Fourteenth Amendment of the U. S. Constitution. App. p. 132.

6. Kozel's disbarment was predicated on alleged conduct during prehearing proceedings before the Hearing Board for which he'd never been charged and, therefore, never given an opportunity to defend against, contrary to rulings from the United States Supreme Court. The Illinois Supreme Court's order of disbarment conflicts with decisions of the U.S. Supreme Court on an important federal question.

The Hearing Board waited until it issued its report to charge Kozel with filing frivolous pleadings, not cooperating and being obstructionist during prehearing proceedings. App. 153. The Hearing Board then considered these findings in aggravation and disbarred Kozel. App. p. 126-8.

Any alleged frivolous pleading, lack of cooperation or obstructionism on Kozel's part during prehearing proceedings before the hearing board, should have been dealt with at that time by affording Kozel notice, a hearing and an opportunity to respond. A good analogy is *Federal Rule of Civil Procedure 11*, where notice, hearing and a response are required prior to the imposition of a sanction. App. p. 256-8.

Post-trial proceedings before the hearing board are prohibited by *Attorney Registration & Disciplinary Rule 284*, so there was no way for Kozel to take any action whatsoever before the hearing board in regard to the charges.

All of the Hearing Board's accusations regarding Kozel's conduct were conclusory in nature, other than an instance in which it claimed that Kozel's objection to a prehearing conference by telephone was "absurd and filed without any investigation." App. p. 126-8. The Hearing Board was simply mistaken.

Attorney Registration & Disciplinary Rule 260(a) and (c) provide that the Administrator and the respondent attorney shall attend prehearing conferences. *Rule 260(e)* provides that a status conference may be held by phone. App. p. 155-6. The chairman of the hearing board scheduled a prehearing conference by telephone. Kozel objected because *ARDC Rule 260(a)* does not provide for a prehearing conference by telephone. The hearing board report deemed this an "absurd" objection. App. p. 126-8.

The Hearing Board claimed in its report that there is no requirement that prehearing conferences be held in person, other than the initial prehearing conference. App. p. 126-8. This is not correct. *Rule 260* does not state that pre-hearing conferences can be held by telephone. The only conferences that can be held by telephone are status conferences.

The ARDC has now proposed changing *ARDC Rule 260* to allow for prehearing conferences by telephone as well as in person. The ARDC has also proposed changing *Rule 261*, which would allow an attorney to substitute a hearing board member for cause, as is common is judicial proceedings. App. p. 154.

Kozel's pleadings during prehearing proceedings before the hearing board were well founded. The Administrator's complaint was

dismissed twice after Kozel filed motions to dismiss. App. Second Amended Complaint, p. 208-244,

Kozel did cooperate during prehearing proceedings before the hearing board. The degree of "cooperation" required of an attorney in a disciplinary matter is not defined by rule. There are only two sources that remotely describe what is required of an attorney in a disciplinary proceeding. Attorney *Registration & Disciplinary Rule 53* does not use the word, cooperation, and only requires that an attorney respond by letter to the Administrator's request for information, which Kozel did. *Supreme Court Rule 753(f)* does not use the word, cooperation, either and only requires an attorney to appear at any hearing in which his presence is required or requested, which Kozel did.

The Illinois Supreme Court has never elaborated on what is required in the way of "cooperation." *In re Samuels*, 126 Ill. 2d 509 (1989); *In re Zisook*, 88 Ill. 2d 321 (1981). Kozel had no way of knowing what was expected of him in regard to cooperation. The net effect was that Kozel was denied due process and the equal protection of the law under the 14th Amendment and disbarred for uncharged misconduct. An attorney cannot be disbarred for uncharged misconduct. *In Re Ruffalo*, 390 U.S. 544 (1968). App. p. 24.

7. The Illinois Supreme Court denied Kozel due process and the equal protection of the law when the court confirmed a recommendation of disbarment by Hearing Board members who were not judicially appointed officers.

Hearing Board members in Kenneth Kozel's case, were two attorneys and a non-lawyer, appointed

by the Attorney Registration and Disciplinary Commission and selected by the Administrator pursuant to Supreme Court Rule 753(c)(1). App. p. 137-138.

The members of the Hearing Board were non-judicial officers because they were appointed by non-judicial officers. As non-judicial officers, the hearing board members were performing judicial acts, contrary to Illinois law and the United States Constitution.

The application of Supreme Court Rule 753(c)(1) to Kenneth Kozel's case, which provides for the appointment of non-judicial officers to the Hearing Board and the apparent adoption of their recommendation for disbarment by the Illinois Supreme Court, denied Kenneth Kozel due process and the equal protection of the law under the Fourteenth Amendment. App. p. 132.

8. The judicial districts that comprise the Illinois Supreme Court are not in compliance with the one man-one vote requirement.

The judicial districts that comprise the Illinois Supreme Court are not in compliance with the federal requirement of one-man, one-vote. *Voting Rights Act of 1965, Section 2, 42 USC 1971.* App. p. 133-134.

According to the 1990 census, the Third Supreme Court District in which Kozel resides, is 8.5% below equality, the Fourth District is 21.9% below equality and the Fifth District is 19.3% below equality. App. p. 185-187. The Second District has nearly 50% more residents than it would have if all four downstate districts were equal.

As a result, the order of disbarment against Kozel is not enforceable since the judicial districts that

comprise the Illinois Supreme Court are ~~not~~ in compliance with the one-man, one-vote requirement.

9. Illinois Supreme Court Rule of Professional Conduct 8.2(a) is unconstitutionally void for vagueness and overbroad as interpreted. The Illinois Supreme Court's order of disbarment conflicts with the decisions of the U.S. Supreme Court on an important federal question.

In the case of *Gentile v. State Bar of Nevada*, 501 U.S. 1030 (1991), a defense attorney held a press conference prior to trial in regard to a criminal case. He stated that the likely perpetrator was a police detective rather than his client, and that certain witnesses were drug dealers and convicted money launderers. The Nevada Supreme Court found that Gentile's statements materially prejudiced the trial in which the attorney's client was acquitted, and disciplined the attorney for making the statements. The U.S. Supreme Court found that the Nevada disciplinary rule prohibiting attorney's extrajudicial statements was unconstitutional and void for vagueness as interpreted, and reversed the order of discipline entered by the Nevada Supreme Court.

Illinois Supreme Court Rule of Professional Conduct 8.2(a) is similar to the Nevada disciplinary rule, and is also void for vagueness as interpreted. *Rule 8.2(a)* states that a lawyer shall not make a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge. App. p. 152. *Rule 8.2(a)* does not define integrity, provides no examples of what is prohibited, and provides no insight or guidance whatsoever into what types of statements are prohibited. Rule 8.2(a) unquestionably vague.

When you look up the word "integrity", the American Heritage Dictionary tells you to "see synonyms for honesty." Kozel never accused any judge of being dishonest, as is apparent from the allegations of the Second Amended Complaint. App. p. 208-244. The Review Board acknowledged that Kozel never accused any judge of criminal wrongdoing. App. p. 25.

Rule 8.2(a) is unconstitutional and void for vagueness as interpreted in the case of Kenneth Kozel. *Rule 8.2(a)* has been used unconstitutionally by the state to disbar Kozel and censor harmless allegations of bias against judges that were necessary to obtain fair hearings for Kozel's clients. If the federal government cannot censor an attorney's speech, neither can state government. *Gary Peel v. ARDC*, 496 U.S. 91 (1990).

10. The punishment of disbarment for alleging bias against a judge is unconstitutionally disproportionate and arbitrary and violated Kenneth Kozel's right to due process and equal protection of the law.

The Review Board compared Kozel's allegations of bias regarding judges to four other attorneys, Phelps, Mason, Standidge and Sarellas. App. p. 26.

Attorney Phelps sued two judges in state court for money damages. She sued a judge in federal court for $250,000.00. She accused the judges of illegal acts. Kozel never sued any judges and never accused any judges of illegal acts. App. 208-244. Attorney Phelps received a two-year suspension and until further order. *In re Phelps*, 55 Ill. 2d 319 (1973).

Attorney Mason sued a judge and thirteen other defendants for over four million dollars as a pro se plaintiff. He accused judges of illegal acts and sought

huge headlines from the press about suing judges. Kozel was never accused of doing anything like this. App. p. 208-244. Attorney Mason received a suspension of one year. *In re Mason*, 33 Ill. 2d 53 (1965).

Attorney Standidge sued three appellate court justices for $100,000.00 as a pro se plaintiff. He accused the justices of acting corruptly. Kozel was never charged with suing justices or accusing them of acting corruptly. App. p. 208-204. Standidge was suspended for six months. *In re Standidge*, 333 Ill. 361 (1928).

Attorney Sarellas looks like he might hold the all-time record for suing judges and lawyers for money damages as a pro se plaintiff, at least thirteen lawsuits. He sued eight lawyers for $100,000.00. He sued two lawyers for $300,000.00 and alleged corruption. He sued seven lawyers in another case. He sued the Greek Consul General for $100,000.00. He sued a master in chancery twice, once for $200,000.00 and once for $300,000.00. He sued thirteen lawyers for $200,000.00. He sued a judge of the superior court for $200,000.00. He sued an attorney twice for $300,000.00, once in state court and once in federal court, and another time in federal court for $600,000.00. He sued the ex-president of the Chicago Bar Association for $600,000.00. Kozel was never charged with doing anything like this. App. p. 208-244. Sarelas received a two-year suspension and until further order. *In re Sarelas*, 50 Ill. 2d 87 (1971).

Attorney Roberto Cisneros, Jr., was recently convicted of three felony counts of aggravated sexual abuse of a fifteen-year-old girl. Kozel has never been convicted of any felony, let alone three felony counts of aggravated sexual abuse of fifteen-year-old girl.

Cisneros received a three-year suspension. In re Cisneros, M.R. 15558 (1999). App. p. 255.

The Review Board noted that the Hearing Board had compared Kozel to Attorneys Jafree and Palmisano when it recommended that Kozel be disbarred. App. p. 25.

The Review Board distinguished Jafree from Kozel. *In re Jafree*, 93 Ill. 2d 450 (1982). Jafree made a career of abusing the judiciary. In contrast, the Review Board found that Kozel had appeared before the same judges in other cases without incident or problem. It also found that some of Kozel's allegations of bias against judges had a colorable basis. The Review Board acknowledged instances in which judges were biased against Kozel or his client. The Review Board found that Kozel did not publish anything about a judge in the press and did not attempt to intimidate and influence any judge. App. p. 25-27.

The Review Board distinguished Palmisano from Kozel. *In Re Palmisano*, 70 F.3d 483 (7th Cir. 1995). Palmisano had accused judges of criminal wrongdoing. Kozel never accused any judge of criminal wrongdoing and was never accused of making any such statements in the Second Amended Complaint. App. p. 25, 208-244.

The punishment of disbarment for alleging bias against a judge is unconstitutionally disproportionate and arbitrary and violated Kenneth Kozel's right to due process and equal protection of the law under the Fourteenth Amendment. App. p. 132.

Kenneth A. Kozel, 801 Second Street, LaSalle, IL 61301 (815) 223-4400

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NO.

IN THE

SUPREME COURT OF THE UNITED STATES

KENNETH A KOZEL,

Petitioner,

v.

ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF THE SUPREME COURT OF ILLINOIS,

Respondent.

On Petition for Writ of Certiorari
To The Illinois Supreme Court

APPENDIX, VOLUME 1

KENNETH A. KOZEL
PETITIONER
801 SECOND STREET
LA SALLE, IL 61301
(815) 223-4400

STATE OF ILLINOIS
SUPREME COURT

In re: Kenneth Alan Kozel
M.R. 16530
Attorney Registration and
Disciplinary Commission 96 CH 50

Motion by Kenneth Alan Kozel for an extension of time to and including March 9, 2000, to file petition for leave to file exceptions to the report and recommendation of the Review Board. Motion denied.

Order entered by Justice Heiple. January 25, 2000

STATE OF ILLINOIS
SUPREME COURT

In re: Kenneth Alan Kozel
M.R. 16530
Attorney Registration and
Disciplinary Commission 96 CH 50

The motion by the Administrator of the Attorney Registration and Disciplinary Commission for an extension of time to and including March 23, 2000, to file her answer to Kenneth Alan Kozel's petition for leave to file exceptions is allowed.

Order entered by Justice Heiple. February 24, 2000

M.R. 16530
STATE OF ILLINOIS
SUPREME COURT

In re: Kenneth Alan Kozel) Attorney-Registration and
Attorney - Respondent) Disciplinary Commission

ORDER

Motion by Kenneth Alan Kozel for leave to file supplement to petition for leave to file exceptions. Motion denied.

Order entered by Justice Heiple. March 15, 2000

M.R. 16530
STATE OF ILLINOIS
SUPREME COURT

In re: Kenneth Alan Kozel) Attorney-Registration and
Attorney - Respondent) Disciplinary Commission

ORDER

Motion by Kenneth Alan Kozel for leave to file second supplement to petition for leave to file exceptions and to supplement the record. Motion denied.

Order entered by Justice Heiple. March 28, 2000

M.R. 16530
STATE OF ILLINOIS
SUPREME COURT

In re: Kenneth Alan Kozel) Attorney-Registration and
Attorney - Respondent) Disciplinary Commission

ORDER

Motion by Kenneth Alan Kozel for leave to file a third supplement to the petition for leave to file exceptions and to supplement the record is denied.

Order entered by Justice Heiple. April 18, 2000

IN RE KENNETH ALAN KOZEL,
Respondent-Appellant
No. 96 CH 50

Synopsis of Review Board Report and Recommendation

(December 1999)

Kozel was charged in a thirteen-count second amended complaint with various misconduct. Most of the misconduct charged related to false accusations, made by Kozel in pleadings, of bias and prejudice by various judges and frivolous issues raised by Kozel in litigation. Kozel denied misconduct and many of the Administrator's factual allegations.

Following protracted prehearing proceedings and a lengthy hearing, the Hearing Board found that Kozel had engaged in all the misconduct charged and recommended that he be disbarred.

Kozel filed exceptions. He raised numerous objections to the proceedings before the Hearing Board, to the factual findings and conclusions of law by the Hearing Board, and to the Hearing Board's recommendation as to discipline. The Administrator sought to uphold the Hearing Board's findings, conclusions, and recommendation of disbarment.

The Review Board rejected most of Kozel's challenges to the procedures before the Hearing Board. The Review Board concluded that the Hearing Board had erred, however, in prohibiting Kozel from presenting character testimony from two witnesses. Given the Review Board's recommendation as to discipline, the Review Board concluded that this error did not warrant remand. The Review Board rejected most of Kozel's challenges to the Hearing Board's findings of misconduct. However, the Review Board

determined that the Hearing Board erred in finding misconduct as to two counts, because the misconduct charged in the second amended complaint differed from the proof presented at the hearing.

The Review Board recommended a three-year suspension, instead of disbarment. In recommending this discipline, the Review Board considered the fact that Kozel had engaged in very serious misconduct. The Review Board noted that his obstructionist conduct in the disciplinary proceedings, particularly before the Hearing Board, aggravated his misconduct. However, the Review Board concluded that disbarment was not warranted because the evidence did not indicate that Kozel's entire legal career was characterized by filing frivolous lawsuits or making baseless charges of misconduct against judges. Also, some of Kozel's allegations that certain judges were biased had some colorable basis. There was evidence that Kozel performed pro bono work. Further, only two of the matters at issue involved client complaints.

BEFORE THE REVIEW BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION AND
DISCIPLINARY COMMISSION

In the Matter of
KENNETH ALAN KOZEL
Respondent-Appellant
No.1519727
Commission No. 96 CH 50

REPORT AND RECOMMENDATION OF THE
REVIEW BOARD

This case is before the Review Board on exceptions filed by Respondent-Appellant, Kenneth Alan Kozel.

The case was heard on a thirteen-count second amended complaint, filed by the Administrator-Appellee on October 25, 1996. This complaint charged Kozel with violating the Illinois Rules of Professional Conduct by: a) asserting positions on behalf of clients that he knew or should have known would serve merely to harass or maliciously injure another in violation of Rule 1.2(f)(1) (134 Ill. 2d. R. 1.2(f)(1)) (eight counts); b) making statements of material fact or law to a tribunal which he knew or should have known were false in violation of Rule 3.3(a)(1) (134 Ill. 2d R. 3.3(a)(l)) (three counts); c) making statements he knew to be false or with reckless disregard for their truth or falsity concerning the qualifications or integrity of a judge in violation of Rule 8.2(a) (134 1ll. 2d R. 8.2(a)) (ten counts); d) asserting frivolous issues in litigation in violation of Rule 3.1 (134 Ill. 2d R. 3.1) (three counts); e) failing to act with reasonable diligence in representing clients in violation of Rule 1.3 (134 Ill. 2d R. 1.3) (two counts); f) using means to represent clients that had no substantial purpose other than to embarrass, delay, or burden a third person in violation of Rule 4.4 (134 Ill. 2d R. 4.4) (two counts); g) practicing law in a jurisdiction where doing so violated the regulation of the legal

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profession in that jurisdiction (one count); b) failing to make reasonable efforts to expedite litigation consistent with his client's interests in violation of Rule 3.2 (134 Ill. 2d R. 3.2) (one count); i) failing to keep his client reasonably informed about the status of her case in

violation of Rule 1.4 (134 Ill. 2d R. 1.4) (one count); j) engaging in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(a)(4) (155 Ill. 2d. R. 8.4(a)(4) (one count); k) engaging in conduct prejudicial to the administration of justice in violation of Rule 8.4(a)(5) (155Ill. 2d R. 8.4(a)(5)) (thirteen counts); and 1) engaging in conduct which tends to bring the legal profession into disrepute in violation of Supreme Court Rule 771 (134 Ill. 2d R. 771) (seven counts). Kozel denied most of the Administrator's factual allegations and all of the allegations of misconduct.

The Hearing Board found that Kozel engaged in all the misconduct charged and recommended disbarment. Pursuant to an order of the Supreme Court entered on February 13, 1998, Kozel was placed on interim suspension.

Kozel raises a myriad of objections to the report and recommendation of the Hearing Board. The Administrator seeks to uphold the Hearing Board's factual findings, conclusions of law, and recommendation as to discipline.

As an initial matter, we are well aware of the unusually long time that this case has been pending before the Review Board and the concern that this has engendered for the parties. However, this is an unusual case and the time involved in reviewing this matter has been significantly lengthened as a result. The hearing lasted for seven days. In addition, there were extensive prehearing proceedings. The record exceeds 5,000 pages. Careful review of that record was necessary, given the nature of the charges. Most of the charges concerned statements allegedly made by Kozel in

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pleadings. This required review of the statements at issue, and the

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other pleadings, transcripts, and docket sheets in evidence from the cases in which those pleadings were filed. Many of those cases were protracted proceedings. Despite Kozel's objections to their admissibility, the files from the cases in which the challenged statements were made had to be reviewed in order to place the statements at issue into context.

The record, and the proceedings below, were further complicated by Kozel's numerous lengthy prehearing pleadings and numerous objections raised at virtually every stage of the proceedings. Most of Kozel's pleadings and objections lacked a legitimate legal basis. Because some of those pleadings and objections had some colorable basis, thorough review of all was required. These matters served to lengthen the time involved in our review of this matter. The Hearing Board, before which Kozel appeared pro se, described his conduct as obstructionist. This characterization is supported by the record.

Further, there was an unusually large number of issues raised and the briefs were lengthy. While counsel appeared for Kozel at the oral argument, Kozel filed his briefs pro se and he raised over thirty issues. Many of these issues required us to undertake independent research, a factor which similarly added to the time involved in our review of this matter.

This is a serious case, particularly given the Hearing Board's recommendation that Kozel be disbarred. We have considered the issues presented on their merits, without regard to any considerations of waiver.

In reviewing this case, we have intentionally avoided consideration of uncharged misconduct except Kozel's conduct in the disciplinary proceedings, as further discussed below.

In compliance with the Administrative Order of the Illinois Supreme Court
adopted with the amendments to Supreme Court Rule 23 (M.R. No. 10343, June 27, 1994), this report and recommendation does not exceed twenty pages. Therefore, this report does not

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contain a complete discussion of the facts, arguments, or law applicable in this matter. However, we have very carefully considered the record in full and all of the arguments raised by both parties. The absence of a complete discussion in this report does not reflect a lack of thorough consideration of the facts, issues, and law.

The facts are detailed in the Hearing Board's report and recommendation. We briefly summarize the matters at issue.

Kozel was admitted to practice law in Illinois in 1975. He served in the United States Army from 1969-71 and was honorably discharged. Kozel had been married for 27 years at the time of the hearing and is the father of three children. There was evidence that Kozel had performed pro bono legal work and represented many people with little or no income. He officed in LaSalle County.

By way of background, John A. Betts was an attorney. He was suspended (In re Betts, 109 Ill. 2d 154, 485 N.E.2d 1081, 92 Ill, Dec. 838 (1985), cert. denied, 476 U.S. 105, 106 S.Ct. 1949, 90 L.Ed.2d 358 (1986)) and later disbarred. In re Betts M.R. No. 9296

(Sept. 27, 1993). In several counts, Kozel is charged with misconduct occurring while representing Betts, or a relative or former client of Betts.

The Thirteenth Judicial Circuit (Thirteenth Circuit) encompasses LaSalle, Bureau, and Grundy Counties. Several of the counts involve Kozel's conduct in matters pending in the Thirteenth Circuit and his allegations of bias on the part of judges of that circuit. At all relevant times, there were twelve judges in the Thirteenth Circuit. Two sat primarily in Grundy County, two sat primarily in Bureau County, and the remaining eight sat primarily in LaSalle County. Judge Robert Carter was chief circuit judge.

Counts I and II arise out of Kozel's representation of Betts in a bankruptcy case.

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On June 25, 1991, the Illinois Supreme Court issued an order assessing Betts for costs of his disciplinary proceedings. Kozel, on behalf of Betts, sought to obtain a discharge of this debt, and others, in bankruptcy. The assigned bankruptcy judge, Judge John Squires, ruled that this debt was not dischargeable. The misconduct charged in Counts I and 11 concern statements, alleging bias by Judge Squires, made in motions to disqualify Judge Squires filed in the bankruptcy case, in a motion for supervisory order filed in the Illinois Supreme Court, and in a motion filed in the United States District Court, after that court affirmed the bankruptcy court's ruling. Misconduct is also charged because of pleadings filed by Kozel in appealing from the bankruptcy court's ruling that the debt to the ARDC was not dischargeable.

Count III involves Kozel's representation of John Maurice in bankruptcy proceedings. In that proceeding

Kozel made allegations, in pleadings, of bias by the assigned judge, Judge Squires. Misconduct is also charged in his overall handling of that case and of a second bankruptcy petition, filed while an appeal was pending, from rulings on the first petition. This count also involved an alleged failure by Kozel to inform Maurice of offers to settle one of the most significant claims in that case.

Counts IV, VI and X involved issues arising from Kozel's representation of Tracy Greenwood. Tracy Greenwood was the daughter of John Greenwood, who died following a natural gas explosion. As a result of that incident, a wrongful death action was filed in the circuit court for the Thirteenth Circuit. An estate was opened, in the Thirteenth Circuit: Tracy was appointed administrator. Betts originally represented Tracy: John Greenwood was related to Betts.

Judgment was entered in favor of Greenwood in the wrongful death case. In cnnection with post-judgment issues, the circuit court issued a preliminary injunction. Kozel

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appealed from that ruling to the Illinois Appellate Court for the Third District. Count IV concerned Kozel's objections to the appellee's brief, because it contained a facsimile signature, rather than an original signature of counsel. Initially, Kozel filed a motion in the Appellate Court to strike the brief. After the Third District denied that motion, Kozel filed a motion, seeking a supervisory order from the Illinois Supreme Court due to the Third District's ruling.

Count VI involved allegations of bias against Judge Stephen D. White, made in motions for

substitution of judge Kozel filed in the wrongful death and probate cases. Judge White, who typically sat in the Twelfth Judicial Circuit, specially assigned by the Illinois Supreme. Court to hear the Greenwood matters.

Count X concerned similar allegations of bias by Judge White, made in a letter purportedly authored by Kozel and directed to Ray Breen, then executive director of the Judicial Inquiry Board (JIB).

Count V arose out of pleadings Kozel filed in connection with his representation of Donna Fegley in a child custody matter and his allegations, in those pleadings, of bias on the part of Thirteenth Circuit Judges Cynthia M. Raccuglia and Charles E. Marshall.

Count VII arose from Kozel's representation of Martin Gibbs, in two criminal cases and three traffic charges, filed in Bureau County. Judge Carter, as chief judge, assigned all of these cases to Judge Marshall. Count VII concerned pleadings filed by Kozel challenging Judge Carter's assignment of these cases to Judge Marshall, and Kozel's. allegations in those pleadings of bias by Judge Carter.

Count VIII involved Kozel's representation of Betts in proceedings concerning the estate of Betts's deceased stepfather, Glen Serby. Those proceedings were conducted in the LaSalle County circuit court. After the recusal of certain Thirteenth Circuit judges, Judge White

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was also specially appointed to preside in the Serby case. Count VIII concerns Kozel's motions for substitution of judges from Judge White. This count also involves Kozel's motions for substitution from Judges William Banich, Cynthia Raccuglia, Chris Ryan,

and Paul Root after each of those judges was assigned, in succession, to hear the motion for substitution from Judge White. In addition, Count VIII involves Kozel's objections to Judge Carter assigning judges to hear the motion for substitution from Judge White. In each of those pleadings, Kozel alleged that each of the judges was biased and could not fairly decide the matter presented to him or her.

Counts IX and XI concern allegations that Judge Carter and David Carey, the clerk of the LaSalle County, were involved in a political conspiracy. The challenged statements alleged that, due to their political affiliation, Judge Carter overlooked legal irregularities by Carey. The alleged irregularities involved the surety bond posted by Carey as clerk of the court and the destruction of a court file, in a small claims case in which Betts was the plaintiff. Both counts are based on letters which purport to have been sent by Kozel. Kozel denied having sent these letters. The letter at issue in Count IX is directed to Ray Breen of the JIB. Carey received this letter by facsimile transmission. Two letters are at issue in Count XI. One is directed to Dan Mueller, of the Administrative Office of the Illinois Supreme Court. The other is directed to Jim Baker, vice president of the company which issued Carey's surety bond, and indicates that it was circulated to various other people.

Count XII involves Kozel's appearance, on behalf of Betts, in a case pending in the United States District Court for the Central District of Illinois (Central District). At the time of that appearance, Kozel was not admitted to practice before the Central District. Kozel, who asserted that this was an inadvertent error,

was held in criminal contempt of court as a result of this appearance.

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Count XIII concerns Kozel's representation of Johanna Yeager in a worker's compensation claim. Betts originally represented Yeager, but was disbarred while her case was pending. Kozel was co-counsel on the matter. The case was dismissed for want of prosecution, when Kozel failed to appear on a date set for hearing, There was an issue as to whether or not Kozel knew of the date. He did not notify Yeager of the dismissal. She retained other attorneys, who obtained an order reinstating the case. Kozel also sought reinstatement, but only after other counsel had moved to reinstate. There was conflicting testimony concerning the extent of communication between Yeager and Kozel and the nature of the representations made by Kozel concerning the status of the matter.

While there are some counts alleging other types of misconduct, this case esentially involves an attorney who has made numerous unfounded allegations that members of the judiciary are prejudiced, either against the attorney himself or against his clients. Each of the statements at issue claimed that a named judge was engaged in a specific impropriety and recited grounds for the claim of prejudice. For example, Judge Squires was accused of knowingly disregarding Betts's legal rights and procedural deficiencies in the ARDC's adversary complaint in the Betts bankruptcy because he was afraid of the power of the ARDC (Count 1). Kozel's pleadings in the Maurice bankruptcy case accused Judge Squires of treating Kozel and Maurice differently from other debtors and attorneys and of going "along with" the alleged harassment of Maurice

by his creditor (Count III). Judge White was accused of racial bias and a business relationship with the opposing side (Counts VI and X). Judge Marshall was accused of being prejudiced because he allegedly had a referral relationship with opposing counsel in the Fegley case (Count V). Judge Ryan was accused of prejudice against Betts in the Serby case because, allegedly, another judge had spoken to Judge Ryan, and other judges, about Betts (Count VIII).

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This list is merely illustrative. Kozel made a barrage of attacks against various judges, both judges in the circuit in which he normally practices and other judges, such as Judges Squires and White.

Most of Kozel's claims were completely unfounded. There were some instances in which Kozel, after prior unsuccessful attempts, ultimately identified a matter which caused a judge to recuse him or her self. For example, Judge Raccuglia recused herself based on a referral relationship, of which she was previously unaware, between her father and the attorney opposing Kozel in the Fegley case. However, most of Kozel's claims of bias had no basis in fact and Kozel had no basis, other than suspicion, for making them. These groundless attacks against judges were numerous and vituperative.

Additionally, Kozel has demonstrated a pattern of filing frivolous pleadings or raising frivolous issues. The problem is not in raising an issue, in good faith but without success, or in seeking review of an adverse ruling by an appropriate tribunal. Such conduct is appropriate advocacy and is frequently necessary to insure that issues are preserved for further review. However, Kozel's conduct involves repeatedly

litigating issues, over and over again, after those issues have already been raised and adjudicated against him. For example, after the district court affirmed the bankruptcy court's ruling that Betts's debt to the ARDC was not dischargeable, Kozel filed a lengthy motion to alter or amend the district court's ruling. This motion, which rehashed Kozel's original arguments, without any legitimate grounds for repetition, was properly considered frivolous. Likewise, regardless of whether or not Kozel had a legitimate basis for seeking to have the Appellate Court strike the appellee's brief in Greenwood the motion for a supervisory order filed in the Supreme Court was frivolous. That motion raised an extremely technical objection, on a relatively minor issue, which had already been resolved against Kozel

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by the Appellate Court. Further, there was no legitimate basis for seeking the extraordinary remedy of a supervisory order against the Appellate Court, on an issue of that nature.

Kozel has continued this conduct in the disciplinary proceedings, and one of the problems inherent in this litigation style has arisen in this case. Specifically, the repeated raising of numerous frivolous objections creates a need to pour over and address issues which have little or no relevance to the real issues in the case, and distracts the tribunal from being able to address, on their merits, legitimate issues presented and issues which are central to resolving the case. This interferes with the ability of the legal system to consider, and fairly adjudicate, not only the case at hand, but also creates a logjam which interferes with the resolution of other cases before the tribunal. Such conduct also fails to serve the interests of the litigants,

by interfering with the prompt and efficient disposition of their cases.

As noted above, Kozel has raised numerous issues. They fall into categories to which certain standards of review apply. We remind the parties that the summary nature of our discussion of the issues is not a reflection of the level of our review, but rather of the limitations we consider applicable to the length of our written opinion. Any issues not specifically discussed herein have been considered, and we have decided that they do not warrant a different result or explicit discussion in this report.

Kozel raises many objections which are technical in nature, or which focus on minute details of the proceedings. Technical challenges to the practice and procedures before the Hearing Board are not favored and generally will not provide grounds for altering the Hearing Board's report and recommendation. See In re Mitan, 75 Ill. 2d 118, 124, 387 N.E.2d 278, 25 Ill. Dec. 662(1979), cert.denied, 444 U.S. 916, 100 S.Ct. 231, 62 L. Ed. 2d 171 (1979). In this case, none of the arguments Kozel makes on technical points warrants modification of the

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Hearing Board's report and recommendation.

Kozel also raises objections to evidentiary rulings by the Hearing Board. Such rulings are reviewed for abuse of discretion. In re Joyce, 133 Ill. 2d 16, 29, 549 N.E. 2d 232, 139 Ill. Dec. 720 (1989). After reviewing the record and applicable law, we conclude that the Hearing Board did not abuse its discretion in most of the evidentiary rulings challenged by Kozel. However, the Hearing Board did abuse its discretion by prohibiting Kozel from presenting character

testimony because the two prospective character witnesses were in the hearing room after the order was entered excluding witnesses. See generally, Cleary and Graham, Handbook of Illinois Evidence, §615.1 (7th ed. 1999). We do not condone the violation Of this order, and there was no showing why the witnesses were present in violation of the order. However, these prospective witnesses were to be called solely as character witnesses. Wider latitude generally is allowed for evidence in mitigation (see generally ARDC Rule 236) (Dis. Com. R. 236) such as character testimony. Further, there is no indication that there would have been any prejudice to the Administrator if these witnesses had been allowed to testify. Conversely, given the limited information presented as to Kozel's character and background, the Prohibition of this testimony carried a danger of real prejudice to Kozel. However, as we are recommending a lesser degree of discipline, we decline to remand for testimony from these witnesses.

Kozel raises various challenges to the Hearing Board's findings of misconduct and the sufficiency of the evidence to support those findings.

In attorney disciplinary cases, the Administrator is required to prove the misconduct charged by clear and convincing evidence. Supreme Court Rule 753©(6) (166 Ill. d R. 753(c)(6)); In Re Blank, 145 Ill. 2d 534, 547, 585 N.E. 2d 105, 165 Ill. Dec. 709 (1991); In

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Re Woldman, 98 Ill. 2d 248, 254, 456 N.E. 2d 35, 74 Ill. Dec. 533 (1983). As demonstrated by an overall review of its report and recommendation, the Hearing Board recognized, and applied, these principles. See In re

Samuels, 126 Ill. 2d 509, 53 5 N.E.2d 808, 816, 129 Ill. Dec. 43 (1989).

Factual findings of the Hearing Board are reviewed deferentially and will not be overturned unless they are against the manifest weight of the evidence. In re Smith, 168 Ill. 2d. 269, 283, 659 N.E. 2d 896, 213 Ill. Dec. 550 (1995). While the Review Board need not accept the Hearing Board's factual findings if they are not supported by clear and convincing evidence (In re Holz, 125 Ill. 2d 546, 554, 533 N.E.2d 818, 127 Ill. Dec. 736 (1988)), we are not free to reverse a decision simply because we might have reached a different conclusion if we had decided the issue in the first instance. In re Tuchow, 90 CH 305 (Review Board Oct. 12, 1994), approved and confirmed, No. M.R. 6757 (Jan. 25, 1995). Instead, for a finding to be against the manifest weight of the evidence, the opposite conclusion must be clearly apparent, i.e.,. the findings must appear to be arbitrary, unreasonable, and not based on the evidence. Cleary & Graham, Handbook of Illinois Evidence, 301.7 (7th ed.1999).

Many of Kozel's arguments are directed to the weight and sufficiency of the evidence and/or the credibility of the witnesses. We have considered all of these arguments and conclude that the findings of the Hearing Board are not contrary to the manifest weight of the evidence. The fact that some of the Hearing Board's findings were based on circumstantial evidence (Counts IX, X, and XI) does not undermine their reliability. Circumstantial evidence is legitimate evidence; indeed, circumstantial evidence may be more convincing than direct evidence and it need not exclude all other possible inferences. McCullough v.

Gallaher & Speck, 254 Ill. App. 3d 941, 949, 627 N.E. 2d 202, 208, 194 Ill. Dec. 86 (1st Dist. 1993); see also Harris

Trust & Savings Bank v. Otis Elevator Co., 297 111. App. 3d 383, 696 N.E.2d 697, 231 Ill. Dec. 401 (Ist Dist.), appeal denied, 179 Ill. 2d 582, 705 N.E.2d 437, 235 Ill. Dec. 564 (1998). We review to determine whether or not the Hearing Board's factual findings are against the manifest weight of the evidence. Smith, 168 Ill. 2d at 283, 659 N.E. 2d 896, 213 Ill. Dec. 550. As noted above, we conclude they are not.

The Administrator did not prove some of the facts alleged in some of the counts of the complaint. For example, Counts V and VIII involve multiple allegations of bias, in multiple pleadings, against multiple judges. Some of those allegations by Kozel had a sufficient factual basis to justify the filing of a. motion for substitution, such as the motions to disqualify Judge Cynthia Raccuglia due to a referral relationship between her father and opposing counsel in the Fegley case and due to her own prior recusal in the Serby case. Such allegations do not constitute misconduct. However, the misconduct charged in those counts included unfounded, false, and baseless allegations of bias by other judges; therefore, the Hearing Board's finding of misconduct on those counts may stand.

Kozel raises various legal issues in objecting to the Hearing Board's findings of misconduct. The Review Board considers such issues de novo. In re Discipio, 163 Ill 2d 515, 527, 645 N.E.2d 906, 206 Ill. Dec. 654 (1995); In re Owens, 144 Ill. 2d 372, 377, 581 N.E.2d 633, 163 Ill. Dec. 479 (1991). We have

considered all of the legal issues raised; we discuss only the more important ones.

There are strong, and legitimate, policy reasons for protecting the court system and members of the judiciary from unfounded attacks, particularly by attorneys. See In re Phelps, 55 Ill. 2d 319, 303 N.E.2d 13 (1973); In re Mason, 33 Ill. 2d 53, 58, 210 N.E.2d 203 (1965). Consequently, attorneys who make defamatory statements about the integrity of the

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judiciary are legitimately subject to discipline. In re Jaffree, 93 Ill. 2d 450, 444 N.E.2d 143, 67 Ill. Dec. 104 (1982); Phelps, 55 Ill. 2d 319, 303 N.E.2d 13. As officers of the court, attorneys accept the imposition of certain standards of conduct, including standards designed to maintain faith in the integrity of the legal system. In re Sarelas, 50 Ill. 2d 87, 97, 277 N.E.2d 313 (1971), cert denied, 406 U.S. 968, 92 S.Ct. 2412, 32 L.Ed. 2d 666 (1972). While this does not allow the disciplinary system to disregard First Amendment considerations (see e.g. In re Oliver 452 F.2d 111, 114 (7th Cir. 1971)), First Amendment principles do not shield attorneys who make false accusations against judges where, as here, the attorney knows that the statements are false or makes statements with reckless disregard for their truth or falsity. In re Matter of Palmisano, 70 F.3d 483 (7th Cir. 1995), cert. denied,517 U.S. 1223, 116 S.Ct. 1854, 134 L.Ed.2d 954 (1996); United States v. Sandlih,12 F.3d 861, 866-67 (9th Cir. 1993); In re Palmisano, 92 CH 109 (Review Board Feb. 17, 1994), approved and confirmed, No. M.R. 10116 (May 19, 1994). Singularly, provisions virtually identical to those of Rule.8.2(a) of the Rules of Professional Conduct (134 Ill. 2d R. 8.2(a)) have been upheld against

challenges that the provisions are Constitutionally overbroad. Sandlin, 12 F.3d at 866.

While statements of opinion are Constitutionally protected (Owen v. Carr, 113 Ill. 2d 273, 280, 497 N.E.2d 1145, 100 Ill. Dec. 783 (1986)) and attorneys can legitimately criticize a judge and disagree and disagree with his or her rulings, attorneys cannot cross the line and unjustly impugn the character or integrity of a judge without having any basis for doing so. See In re Sawyer, 360 U.S. 622, 631-32, 634-36, 79 S.Ct. 1376, 3 L.Ed.2d 1473, 1480-83 (1959); People ex rel. Chicago Bar Association v. Metzen, 291 Ill. 55, 58, 125 N.E. 734 (1919). This is true even of statements which might appear to be matters of opinion, where those statements imply a factual basis and where there is no support for that factual basis. Palmisano, 70 F.3d at 487. While the

Ninth Circuit has taken a contrary view (Standing Committee on Discipline v. Yagman, 55 F. 3d 1430 (9th Cir. 1995)), we agree with the Seventh Circuit's rejection of those portions of the Yagman opinion. Palmisano, 70 F.3d at 487. Further, accusations of bias or improper collusion with the opposing party or opposing counsel, which have no basis or are based on mere conjecture, are not constitutionally protected and will subject an attorney to discipline. In re Betts, No. 90 SH 49 (Review Board June 16, 1993), order of disbarment entered, No. M.R. 9296 (Sept. 27, 1993).

The ARDC, as the agent of the Supreme Court, legitimately prosecuted all of the charges of misconduct here, and the Illinois Supreme Court has jurisdiction to discipline Kozel for all of the misconduct charged, even though some of that misconduct

occurred in the federal courts. See Jaffree, 93 Ill. 2d at 456, 444 N.E. 2d 143, 67 Ill. Dec. 104; Mitan, 75 Ill. 2d at 123, 387 N.E.2d 278, 25 Ill. Dec.662. Further, the procedures promulgated by the Supreme Court for the conduct of attorney disciplinary proceedings, including review by the Review Board as opposed to review under the Administrative Review Law, 735 ILCS 5/3-101 et seq., are legitimate delegations by the Court, to its agents, of its authority to discipline attorneys. See In re Harris, 93 Ill. 2d 285, 443 N.E.2d 557, 559, 66 Ill. Dec. 631 (1982); Mitan, 75 Ill. 2d at 124, 387 N.E.2d 278, 25 Ill. Dec. 662; Phelps, 55 Ill. 2d at 322, 303 NE.2d 13; Sarelas 50 Ill. 2d at 96; 277 N.E.2d 313. The Court has ultimate authority over attorney disciplinary matters, and the procedures it has established for those proceedings at the Hearing and Review Board levels do not deny constitutional principles. See Harris, 93 Ill. 2d 285, 443 N.E.2d at 559, 66 Ill. Dec. 631; Mitan, 75 Ill. 2d at 124, 387 N.E.2d 278, 25 Ill. Dec.662; Phelps, 55 Ill. 2d at 322, 303 N.E.2d 13; Sarelas, 50 Ill. 2d at 96, 277 N.E.2d 313.

Kozel challenges the Hearing Board's findings of misconduct as to Count XII,

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given a prior closure of this charge by the Inquiry Board. Because there are ambiguities in the record on this point, and as we, like the Hearing Board, see the misconduct in Count XII as not adding in any significant way the discipline to be imposed, we do not decide whether Count XII was improperly included in this case. However, there are legitimate policy concerns, including issues of laches, in allowing the Administrator to seek to prosecute charges against a respondent where an inquiry panel has previously

closed an investigation into those same facts, without charges. See In re Friedman, 92 CH 26 (Hearing Board Report Jan. 7, 1993). This would seem to contravene the powers of the Inquiry Board. See Supreme Court Rule 753 (166 Ill. 2d R. 753); ARDC Rule 211 (Dis. Com. R. 211); Betts, 109 Ill. 2d 154, 485 N.E.2d 1081, 92 Ill. Dec. at 844; Mitan, 75 Ill. 2d at 126, 387 N.E. 2d 278, 25 Ill. Dec. 662.

Two of the counts, Count's IX and X, charge Kozel with misconduct based on statements made in correspondence directed to the chairman of the Judicial Inquiry Board (JIB). Kozel contends that he cannot legitimately be found to have engaged in misconduct due to statements made to the JIB.

Communications with the JIB are confidential (Owen v. Mann, 105 Ill. 2d 525, 535, 475 N.E. 2d 886, 86 Ill. Dec. 507 (1985)) and privileged. Starnes v. Intemational Harvester, Co., 184 Ill. App. 3d 199, 203, 539 N.E.2d 1372, 132 Ill. Dec. 566 (1989), criticized on other grounds, Bryson v. New America Publications, 174 Ill. 2d 77, 108, 672 N.E.2d 1207, 220 Ill. Dec. 195 (1996). However, the privilege does not apply to false statements made by an attorney to the JIB, which the attorney knows to be false or makes with reckless disregard for their falsity, or where the statements are disseminated to someone other than the JIB. In re Palmisano, No. 92 CH 109 (Review Board Feb 17, 1994).

Here, the evidence showed that letters containing the statements which were the

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subject of Counts IX and X were received, by facsimile, by Carey, the clerk of the court. There is no indication of whether or not the same letters were sent to, or received by, the executive director of the JIB, to whom

the letters were directed. However, Counts IX and X charge Kozel with misconduct by virtue of having sent the letters to the JIB, not to Carey. This is a different theory and would involve different legal considerations. As an attorney cannot properly be disciplined for uncharged misconduct (In re Ruffalo, 390 U.S. 544, 88 S.Ct. 1222, 20 L.Ed. 2d 117 (1968)), the Hearing Board's findings of misconduct on these two counts should not stand.

The final issue to be discussed concerns the propriety of the sanction recommended by the Hearing Board. The Hearing Board's recommendation as to discipline, while deserving consideration, is not binding. In re Imming, 131 Ill. 2d 239, 545 N.E. 2d 715, 720, 137 Ill. Dec. 62 (1989).

In fashioning the proper sanction to be imposed in any given case, the Review Board seeks to impose sanctions consistent with those imposed in other similar cases; however, each case is unique and must be resolved based on its own particular facts and circumstances. In re Timpone, 57 Ill. 2d 178, 197, 623 N.E. 2d 300, 191 III. Dec. 55 (I 993); Jafree, 93 Ill. 2d at 459, 444 N.E. 2d 143, 67 Ill. Dec. 104. In imposing discipline, the purpose is not to punish the individual respondent, but to protect the public, maintain the integrity of the profession, and protect the administration of justice from reproach. Timpone, 157 Ill. 2d at 197, 623 N.E.2d 300, 191 Ill. Dec. 55. The principle of seeking some level of consistency in imposing discipline requires comparison with other cases involving similar misconduct. See, generally Jafree, 93 Ill. 2d at 459, 444 N.E. 2d 143, 67 Ill. Dec. 104.

We have considered cases involving misconduct similar to Kozel's. In some such cases, the respondents

have been disbarred. E.g. Jafree, 93 Ill. 2d 450, 444 N.E. 2d 143, 67 Ill.

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Dec. 104, People ex rel. Chicago Bar Association v. Metzen, 291 Ill. 55, 125 N.E. 734 (1920), In re Palmisano, 92 CH 109 (Review Board Feb. 17, 1994), approved and confirmed, No. M.R. 101 16 (May 19, 1994). The Hearing Board relied on Jafree and Palmisano in recommending disbarment here. However, there are differences between the conduct of the respondents in those cases and in Kozel's conduct and circumstances overall. Unlike Kozel, Metzen publicized, in the press, his accusations against the judiciary, and attempted to intimidate and influence the judge against whom the accusations were made. Metzen 291 Ill. at 58, 125 N.E. 734. The sheer volume of frivolous litigation filed by Jafree differentiates his circumstances from Kozel's. In addition, Jafree had a prior suspension. Also, in disbarring Jafree, the Court observed that his entire legal career was characterized by the filing of frivolous lawsuits and scurrilous charges. Jafree, 93 Ill. 2d at 462, 444 N.E.2d 143, 67 Ill. Dec. 104. This is not true of Kozel. Also, while not true of all the judges, several of the Thirteenth Circuit judges who testified indicated that they did not have an overall bias against Kozel and that he appeared before them in other cases, which were not the subject of these proceedings, without incident or problem. In Palmisano all of the allegations were completely unfounded and the respondent's attacks against members of the judiciary included specific allegations that named judges had engaged in criminal wrong-doing. Here, in contrast, some of Kozel's allegations of bias had some colorable basis.

This is afactor which we have considered in mitigation in this case.

In other cases involving misconduct of this nature, the respondents were suspended, not disbarred. E.g. Phelps, 55 Ill. 2d 319, 303 N.E. 2d 13 (two-year suspension); suspension); Sarelas, 50 Ill. 2d 87, 277 N.E. 2d 313 (suspension for two years and until further order of the Court); In re Mason, 33 Ill. 2d 53, 210 N.E. 2d 203 (1965) (one-year suspension); People ex rel. Chicago Bar Association v. Standidge, 333 Ill. 361, 164 N.E. 844 (1928) (six-month suspension).

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The misconduct at issue in Mason and Standidge was far more limited than that here. Therefore, Kozel deserves a harsher sanction than was imposed in those cases. We also see his overall misconduct as more severe that that of respondents in Phelps and Sarelas, and there is some additional misconduct in this case. Therefore, we recommend a three-year, rather than a two-year, suspension. However, we do consider those cases in our overall decision to recommend suspension, rather than disbarment.

We have reviewed the applicable case law, and the record, in detail. Kozel's misconduct is serious. Such conduct does not serve the interests of Kozel's clients or the legal system, and demeans the public perception or the integrity of the judiciary and the legal profession. Kozel's misconduct very nearly warranted the forfeiture of his privilege to practice law. We do not believe responsible advocacy would be chilled by imposing severe discipline or even disbarment under circumstances such as these.

Kozel's underlying misconduct is aggravated by his conduct in the disciplinary proceedings, where he has continued to repeatedly re-litigate issues, and to engage in abusive attacks, such as his extremely offensive attacks against the members of the hearing panel. See Sarelas, 50 Ill. 2d at 98, 277 N.E. 2d 313. Contrary to Kozel's arguments, that conduct is legitimately considered in aggravation. See In re Smith, 168 Ill. 2d 269, 295, 659 N.E.2d 896, 213 Ill. Dec. 550 (1995); In re Samuels, 126 Ill. 2d 509, 535 N.E. 2d 808, 129 Ill. Dec. 43 (1989).

However, there are mitigating factors present here which cause us to recommend a suspension, instead of disbarment. These include the fact that there is evidence of pro bono work and the fact that only two of the matters here (Yeager and Maurice) involve client complaints. Additionally, the following considerations mitigate the severity of the misconduct.

There were some instances in which Kozel had a basis for alleging that a

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particular judge was biased against him or his client. For example, Judge Carter acknowledged that he never heard cases in which Kozel or Betts was involved and that he never spoke to Kozel unless a court reporter was present. Some of the allegations involving Judge Raccuglia caused her to recuse herself. We do not suggest that, in each instance in which there was a colorable basis for seeking recusal, the judge at issue was actually prejudiced; that is not the issue. We Also do not condone the excessive, immoderate, and unjustifiable language used by Kozel in claiming prejudice. However, the fact that not all of the

allegations at issue were groundless reduces the severity of Kozel's overall misconduct.

For these reasons, we affirm the findings of fact and conclusions of law of the Hearing Board on Counts I through VIII and Counts XI through XIII. We reverse its findings of misconduct on Counts IX and X. We recommend that Respondent-Appellant, Kenneth Alan Kozel be suspended for three years.

Respectfully submitted,
Robert J. Egan
Kevin M. Forde
Melissa A- Rheinecker

Date: 30 December 1999

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